

<b>Decision maker:</b>	<b>Officer: Director for economy, communities and corporate</b>
<b>Decision date:</b>	<b>25 April 2017</b>
<b>Title of report:</b>	<b>16 – 18 High Town compulsory purchase order</b>
<b>Report by:</b>	<b>Regeneration Programmes Manager</b>

## **Classification**

Open

## **Key decision**

This is not a key decision.

## **Wards affected**

Central

## **Purpose**

To approve the making of necessary orders to expedite the purchase and subsequent development of 16 – 18 High Town, Hereford.

## **Recommendation(s)**

**THAT:**

- (a) approval be given to commence the making of a compulsory purchase order (CPO) for 16-18 High Town Hereford (in accordance with the order document attached at appendix A), under the council's statutory powers of compulsory acquisition.**

## **Alternative options**

1 No alternative is suggested as all reasonable time and assistance has been given to

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Further information on the subject of this report is available from  
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the current owner/liquidator to encourage the sale and redevelopment of the site.

## Reasons for recommendations

- 2 The current dilapidated state of the site is considered to be a blight on the city centre.
- 3 A CPO would enable the council to purchase and redevelop the site, thereby remedying the situation.
- 4 Authority to effect the purchase was delegated by cabinet to the director for economy, communities and corporate.

## Key considerations

- 5 16-18 High Town was severely damaged by fire in October 2010 and now comprises the extensively damaged remnants of a three to four storey terraced grade II listed building.
- 6 The burnt out, propped up buildings have remained an eyesore in the city centre since that date. The extent of the property is edged in red in the appended location plan, this includes the passageway which was omitted in error from the February 2016 cabinet report but was intended to be included in the decision to CPO the full site.
- 7 In February 2016 no progress towards selling/redeveloping the site had been made by the owners/liquidators. Cabinet determined to purchase the site, using a CPO if necessary) if insufficient evidence was available to demonstrate the property would be brought back into use within a reasonable timescale.
- 8 Authority was delegated to the director for economy, community and corporate following consultation with the relevant cabinet member and the director of finance (now the chief finance officer), to approve the business case and take all necessary steps to effect the purchase.
- 9 In anticipation of a potential purchase, provision was made in the capital programme to purchase and redevelop the site.
- 10 In 2016 Heritage England relaxed some of their listed building constraints for the site. As a result a revised planning application was approved on 25 July 2016 which presented a more viable investment opportunity for prospective developers.
- 11 Active marketing of the site then commenced both locally and at a national level in the Estates Gazette.
- 12 We are advised by Western Power Distribution (WPD) that electricity supply in High Town is at capacity and they are struggling to keep up with existing demand let alone accommodating new development and need to address this issue as a matter of urgency. There is a decommissioned substation in the rear yard of 16-18 High Town and WPD have confirmed that this needs to be replaced to provide additional supply. Clearly such a move would reduce the space available for redevelopment, and officers have been working with WPD to identify a suitable compromise or alternative. This unresolved issue may have been deterring prospective developers.
- 13 Since July the council has been advised by both the liquidator and the agent that there has been keen interest in the site and that conditional offers have been

received. However there is no evidence that there is a clear timetable in place for redevelopment of the site and the council has had no approaches from developers; to date the site remains unsold.

- 14 Using the district valuer's December 2016 estimate, the council made a formal offer for the site on 9 February 2017 stating that if the offer was not accepted by 9 March 2017 then it would be withdrawn. This offer has not been accepted.
- 15 It is therefore proposed that the council begins the process of making a CPO for 16-18 High Town under its statutory powers of acquisition.
- 16 We are advised by the agent that there is still interest in the site. Should the site just be purchase it is proposed that the CPO should still go ahead. However, in the event that the site is purchased and there is clear evidence that it is being developed the CPO process can be stopped.

## **Community impact**

- 17 These severely damaged commercial buildings are a prominent eyesore in an otherwise attractive conservation area which has a negative impact on the amenity for both the local community and those who visit, shop and/or do business in the city.
- 18 The council has begun a major refurbishment of the High town area and the dilapidated building is a constraint to the successful completion of the project.

## **Equality duty**

- 19 The council is of the view that, in pursuing a CPO, it has carefully considered the balance to be struck between individuals rights and the wider public interest. Any interference with convention rights, if there is any, is considered to be justified in order to secure the repair of the listed building in a sensitive historic town centre site. Appropriate compensation will be available to the current owners of the premises, by agreement or under the relevant statutory CPO provisions.

## **Financial implications**

- 20 At present there is a budget in the approved capital programme to fund the acquisition of this site. Should the council wish to develop this site itself or partner with a developer a further report will be written seeking approval for the required funds and detailing the costs and benefits of the project.
- 21 A prudent business case has been drafted using professional internal and external advice around potential costs and income. The net capital result (assuming that the council develops the property and disposes as mixed residential and retail premises) indicates a break-even outcome. Additionally, the council would benefit from ongoing council tax and business rates income.
- 22 Although the modelling assumptions are prudent, an adverse result of costs or income may mean that the council is unable to directly recover the full capital costs of the CPO and/or any development investment.

## **Legal implications**

- 23 A compulsory purchase is a legal function that allows certain public bodies to acquire

land, for a specific purpose, if the landowner is not willing to sell to the relevant body by agreement.

- 24 A public authority will want the assurance that the site can be sold to it without undue delay and without being held to ransom by owners seeking to maximise value unreasonably and or simply being unwilling to sell. Compulsory powers also have the further advantage that the price paid will be in accordance with the statutory compensation code and disputes over that price will not hold up the acquisition of the land.
- 25 The procedure for making and confirming CPOs is, in most cases, governed by the Acquisition of Land Act 1981 (ALA 1981), as amended by the Planning and Compulsory Purchase Act 2004.
- 26 Most compulsory acquisitions are authorised by an enabling act of Parliament which authorises the use of compulsory purchase power for a specific purpose (usually confirmed by the appropriate Secretary of State)
- 27 Different acts of Parliament enable public bodies to use compulsory purchase powers for a particular purpose. Therefore the most appropriate power to use varies from case to case.
- 28 In this case although both buildings making up the Property are Grade II Listed and located in a Conservation Area, the damage caused by the fire was such that much of the property will need to be reconstructed. It is not therefore possible to retain in any redevelopment the majority of the remaining listed structures. Both Historic England and the Council's own Building Conservation Officer have acknowledged and agreed that the condition of the fabric of the buildings have deteriorated beyond economic repair. Demolition of the buildings on the property has been approved. Whilst it is acknowledged that the buildings on the property are listed, the status of the buildings appears secondary to the requirement that the property is brought back into use as an important element of the town centre retail offering and to provide much needed residential accommodation.
- 29 Having regard to:
- a) The current condition of the listed buildings
  - b) The proposal to demolish most of the fabric of the listed buildings
  - c) The plans to reconstruct only a facsimile of the previously existing buildings, and
  - d) The council's desire to see the property redeveloped in order to bring the property back into use as part of the retail and housing offering in Hereford town centre, thereby regenerating a predominant town centre site that has remained vacant and undeveloped for nearly 7 years

The more appropriate power would appear to be under section 226 (1) (a) of the Town and Country Planning Act 1990 (TCPA powers).

- 30 These provisions under the 1990 Act enable acquiring authorities with planning powers to acquire land if they think that it will facilitate the carrying out of development, redevelopment or improvement on, or in relation to, the land being acquired. The wide power under the TCPA powers is subject to the restriction that the acquiring authority must not exercise the power unless it thinks that the proposed

development, redevelopment or improvement is unlikely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of the area for which the acquiring authority has administrative authority. The council's proposals for the property which involve developing the property in accordance with existing planning permission(s) would appear to satisfy this criteria.

- 31 If the council was to proceed under the TCPA powers then it would have to present the argument that the proposed development of the property fits in with the council's community strategies and Local Development Documents. Moreover that the council thinks that the development "is likely to contribute to achieving the promotion or improvement of the economic, social or environmental well-being of its area". The proposed development has already obtained planning permission so it must be assumed that the Council's proposal for redevelopment, which will follow the planning permission already obtained, fits in with local planning policy and the NPPF. The council will also need to be satisfied that the proposed development of the property fits in with the council's regeneration strategy and will provide benefits to the public generally.
- 32 Confirmation of the CPO is normally required from the appropriate minister or Secretary of State before an order can be implemented. Regardless of the power to be relied upon, implementation will have to be justified by the Secretary of State beforehand. The acquiring authority must be able to demonstrate in documentary , in respect of the CPO, that:
- It is authorised by statute to purchase land compulsorily for a particular purpose and the CPO is necessary to achieve that purpose.
  - There is a compelling case in the public interest that sufficiently justifies interfering with the rights of those with an interest in the land affected.
  - Adequate resources are (likely to be) available to implement both the CPO (within the statutory period following confirmation) and the CPO scheme within a reasonable time frame.
- 33 The CPO process can take some time to conclude, this being anywhere between 6/8 months to a number of years. This is largely dependent upon whether the scheme is opposed and whether or not there would be a public inquiry. Given the history of this site that would seem unlikely. In any event the alternative to this process would be a disposal on the open market. To this end the seller has accepted an offer from a private developer and the sale is reasonably well advanced: Heads of Terms have been agreed and signed off by both seller and buyer and a contract issued. Although completion was originally intended for the end of March 2017 this date has had to be put back. The nature of the developer's plans for the site are such that they require a modification to the existing planning consent. This process is expected to take in the region of 8 weeks. Unless or until this has occurred completion may not take place and the buyer may not proceed.

## **Risk management**

- 34 Purchase of the property offers the opportunity to revitalise and improve the high town area. The main risk would be the cost to the council should the sale price of the property be less than the purchase price paid. It is considered that this risk is minimal given the relative stability of the property market, and the development opportunity of the site.

- 35 Failure to pursue compulsory purchase or obtain confirmation of CPO from the Secretary of State will hinder the council's ability to successfully complete the major refurbishment of high town, and lead to continued bad publicity.
- 36 Once the CPO process is commenced this would blight the site which could result in offers to purchase being withdrawn.

## **Consultees**

- 37 The local member and the cabinet member contracts and assets and the chief finance officer have been consulted and support the proposed action.

## **Appendices**

Appendix A - Location plan of site

Appendix B - Cabinet report: option appraisal for 16-18 High Town

## **Background papers**

- None identified.